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9
10 U.S. DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

12 AUDREY LUDLUM, Individually
13 and For Others Similarly Situated.

14 Case No.:
15 4:18-cv-05192

16 Plaintiffs,
17 v.

18 **CLASS AND
19 COLLECTIVE ACTION
20 COMPLAINT**

21 C&I ENGINEERING, LLC.

22 **JURY TRIAL
23 DEMANDED**

24 Defendant.

25 Plaintiff Audrey Ludlum (Ludlum) is informed and believes, and on
26 that basis alleges, as follows:

27 **SUMMARY**

28 1. C&I Engineering, LLC (C&I) failed to pay Ludlum, and other
29 workers like her, overtime as required by the Fair Labor Standards Act
(FLSA) and the Revised Code of Washington, Chapter 49.46 *et seq.*
30 (RCW), Washington's Minimum Wage Act (WMWA), and any relevant
31 regulations and/or rules adopted by the Washington Director of Labor and
32 Industries (collectively, "Washington Wage Laws").

33 CLASS AND COLLECTIVE ACTION
34 COMPLAINT - 1



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2. Instead, C&I pays Ludlum, and other workers like her, the same hourly rate for all hours worked, including those in excess of 40 in a workweek.

3. C&I further failed to pay Ludlum, and other workers like her, for all rest breaks, meal breaks in violation of Washington Wage Laws.

4. Ludlum brings this collective and class action to recover unpaid overtime and other damages.

JURISDICTION AND VENUE

5. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

6. The Court has federal jurisdiction over this action pursuant to the jurisdictional provisions of the Class Action Fairness Act, 28 U.S.C. § 1332(d). The Court also has supplemental jurisdiction over any state law sub-class pursuant to 28 U.S.C. § 1337.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1331 as a significant portion of the facts giving rise to this lawsuit occurred in this District.

8. Ludlum performed work for C&I in Richland, Washington, in this District and Division.

THE PARTIES

9. Ludlum was an hourly employee of C&I. Her written consent is attached as Exhibit A.

10. Ludlum seeks conditional and final certification of this FLSA collective action under 29 U.S.C. § 216(b).

11. The class of similarly situated employees sought to be certified as a collective action under the FLSA is defined as:

All hourly employees of C&I Engineering, LLC who were, at any point in the past 3 years, paid “straight time for overtime.” (the “FLSA Class”).

12. Ludlum also seeks certification of a class under Fed. R. Civ. P.
23 to remedy C&I's violations of the Washington Wage Laws.

13. The class of similarly situated employees sought to be certified as a class action for the purposes of pursuing their Washington Wage Laws claims is defined as:

All hourly employees of C&I who worked in Washington who were, at any point in the past 3 years, paid “straight time for overtime” (the “Washington Class”).

14. Collectively, the FLSA Class Members and Washington Class Members are referred to as “Class Members.”

15. C&I is an engineering firm with headquarters in Louisville, Kentucky. C&I may be served with process by serving its registered agent:

1 C&I Engineering, LLC, 369 Falconridge Street, Richland, Washington,
2 99352.

3 **Coverage Under the FLSA**

4 16. At all times hereinafter mentioned, C&I was and is an
5 employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. §
6 203(d).

7 17. At all times hereinafter mentioned, C&I was and is an
8 enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. §
9 203(r).

10 18. At all relevant times, C&I was an enterprise engaged in
11 commerce or in the production of goods for commerce within the meaning
12 of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), because C&I is an
13 engineering firm providing design, consulting, construction and
14 management services throughout this country.

15 19. At all relevant times, C&I had an annual gross volume of sales
16 made in excess of \$5,000,000.00.

17 20. At all times hereinafter mentioned, Ludlum and the Class
18 Members were engaged in commerce or in the production of goods for
19 commerce per 29 U.S.C. §§ 206-207.

THE FACTS

21. C&I is a multi-million-dollar engineering firm that provides design, consulting, construction, and management services to clients across the United States.

22. In order to provide these services, it employs individuals like Ludlum.

23. Ludlum was an hourly employee of C&I.

24. Ludlum was hired around January of 2017.

25. Ludlum was a Civil Engineer for C&I.

26. C&I paid Ludlum by the hour.

27. C&I paid Ludlum \$83.00 per hour.

28. Ludlum reported the hours she worked to C&I on a regular basis.

29. If Ludlum worked fewer than 40 hours in a week, she was only paid only for the hours she worked.

30. But Ludlum regularly worked more than 40 hours in a week.

31. For example, during the two-week pay period ending on April 8, 2016, Ludlum was credited for working 144 hours.

32. During both of those two weeks, Ludlum worked more than 40 hours

33. Ludlum was paid \$83.00 for all 144 hours she worked.

34. The hours Ludlum worked are reflected in C&I's records.

35. C&I paid Ludlum at the same hourly rate for all hours worked, including those in excess of 40 in a workweek.

36. Rather than receiving time and half as required by the FLSA, Ludlum only received “straight time” pay for overtime hours worked.

37. This “straight time for overtime” payment scheme violates the FLSA.

38. Ludlum was not paid for periods of inactivity during meal breaks and rest breaks.

39. C&I has not paid Ludlum the overtime she is owed, constituting waiting time.

40. C&I was aware of the overtime requirements of the FLSA.

41. C&I nonetheless failed to pay certain hourly employees, such as Ludlum, overtime.

42. C&I's failure to pay overtime to these hourly workers was, and is, a willful violation of the FLSA.

FLSA VIOLATIONS

43. By failing to pay Ludlum and the FLSA Class Members overtime at one-and-one-half times their regular rates, C&I violated the FLSA's overtime provisions.

44. C&I owes Ludlum and the FLSA Class Members the difference between the rate actually paid and the proper overtime rate.

45. Any differences in job duties do not detract from the fact that these hourly workers are entitled to overtime pay.

46. Because C&I knew, or showed reckless disregard for whether, its pay practices violated the FLSA, C&I owes these wages for at least the past three years.

47. C&I is liable to Ludlum and the FLSA Class Members an amount equal to all unpaid overtime wages as liquidated damages.

48. Ludlum and the FLSA Class Members are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

49. The workers impacted by C&I's "straight time for overtime" scheme should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b).

WASHINGTON WAGE LAW VIOLATIONS

50. Ludlum realleges and reincorporates all allegations above as if incorporated herein.

51. The foregoing conduct, as alleged, violate the Washington Wage Laws.

1 52. At all relevant times, C&I has been, and continue to be, an
 2 “employer” within the meaning of the Washington Wage Laws. At all
 3 relevant times, C&I employed “employee[s],” including Ludlum and the
 4 Washington Class, within the meaning of the Washington Wage Laws.
 5

6 53. RCW §49.52.070 provides that employers who violate
 7 Washington’s minimum wage laws under the circumstances present in
 8 this case are liable for double the amount of wages improperly withheld.

9 54. Pursuant to RCW §49.52.080, there exists a presumption of
 10 willfulness.

11 55. The Washington Wage Laws require an employer, such as C&I
 12 to pay overtime compensation to all non-exempt employees. Ludlum and
 13 the Washington Class are not exempt from overtime pay requirements
 14 under the Washington Wage Laws.

16 56. More specifically, the Washington Class members’ claims are
 17 subject to the three-year statute of limitations applicable to the WMWA
 18 and implied contracts, as provided under RCW § 4.16.080(3). *See e.g.,*
 19 *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*, 139 Wash. 2d 824,
 20 838, 991 P.2d 1126, 1134, opinion corrected on denial of reconsideration, 1
 21 P.3d 578 (Wash. 2000); *Mitchell v. PEMCO Mut. Ins. Co.*, 134 Wash. App.
 22 723, 737, 142 P.3d 623 (2006).

1 57. At all relevant times, C&I had a policy and practice of failing
 2 and refusing to pay overtime pay to Ludlum for her hours worked in
 3 excess of forty hours per workweek.

4 58. C&I violated Washington Wage Laws including, but not
 5 necessarily limited to, RCW, WMWA, by failing to pay the Washington
 6 Class on a salary basis.

7 59. At all relevant times, C&I did not pay the Washington Class on
 8 a salary basis, so the Washington Class was not exempt under Wash.
 9 Admin. Code §296-128-510 (executive), Wash. Admin. Code §296-128-
 10 520 (administrative), Wash. Admin. Code §296-128-530 (professional),
 11 and Wash. Admin. Code §296-128-532 (salary basis and deductions).

12 60. With regards to the Class Members, C&I did not comply with
 13 Washington Admin. Code §296-126-092(4) which provides: “Employees
 14 shall be allowed a rest period of not less than ten minutes, on the
 15 employer’s time, for each four hours of working time.”

16 61. At all relevant times, C&I willfully failed and refused, and
 17 continues to willfully fail and refuse, to pay Ludlum and Class Members
 18 the amounts owed. Specifically, C&I claws back all hourly advances not
 19 paid for rest/meal break time. This conduct violates Washington Wage
 20 Laws as alleged in this cause of action.

62. C&I has denied Ludlum and the Washington Class wages and benefits of employment, including contractual vacation pay, as alleged herein. C&I's deduction of Ludlum and the Washington Class members vacation pay for wages results in depriving Ludlum and Washington Class members of their vacation pay, in violation of RCW §49.52.050. C&I is, therefore, liable to Ludlum and the Washington Class for all such vacation pay and other improperly deducted or rebated wages or earnings, and double damages, under RCW §49.52.070.

63. Ludlum and the Washington Class seek recovery of attorneys' fees, costs, and expenses of this action to be paid by C&I.

64. Ludlum and the Washington Class seek damages in the amount of the respective unpaid wages earned and due at the regular hourly wage rate, and at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek; actual damages; penalty damages; and such other legal and equitable relief as the Court deems just and proper.

CLASS AND COLLECTIVE ACTION ALLEGATIONS

65. C&I's illegal "straight time for overtime" policy extends beyond Ludlum.

1 66. It is the “straight time for overtime” payment plan that violates
2 the FLSA in this collective and class action.

3 67. C&I pays hundreds of hourly employees according to the same
4 unlawful scheme.

5 68. Any differences in job duties do not detract from the fact that
6 these hourly workers were entitled to overtime pay.

8 69. Ludlum and the Class Members impacted by C&I’s “straight
9 time for overtime” scheme should be notified of this action and given the
10 chance to join pursuant to 29 U.S.C. § 216(b).

11 70. C&I has accurate records of the wages paid to its hourly
12 workers.

14 71. The Class Members are geographically disbursed, residing,
15 and working in states across the country.

16 72. Ludlum’s experiences are typical of the experiences of all Class
17 Members.

18 73. Ludlum has no interests contrary to, or in conflict with, the
19 members of the Class Members. Like each member of the proposed
20 classes, Ludlum has an interest in obtaining the unpaid overtime wages
21 owed under state and/or federal law.

1 74. A class and collective action, such as the instant one, is
 2 superior to other available means for fair and efficient adjudication of the
 3 lawsuit.

4 75. Absent this action, many members of the FLSA Class and
 5 Washington Class likely will not obtain redress of their injuries and C&I
 6 will retain the proceeds of their violations of the FLSA and Washington
 7 Wage Laws.

8 76. Furthermore, individual litigation would be unduly
 9 burdensome to the judicial system. Concentrating the litigation in one
 10 forum will promote judicial economy and parity among the claims of
 11 individual members of the classes and provide for judicial consistency.

12 77. The questions of law and facts common to each of the FLSA
 13 and Washington Class Members predominate over any questions affecting
 14 solely the individual members. Among the common questions of law and
 15 fact are:

16 a. Whether C&I employed the FLSA and Washington
 17 Class Members within the meaning of the FLSA and
 18 Washington Wage Laws;

19 b. Whether the FLSA and Washington Class
 20 Members were exempt from overtime;

c. Whether C&I's decision not to pay overtime to the FLSA and Washington Class Members was made in good faith; and

d. Whether C&I's violation of the FLSA and Washington Wage Laws was willful.

78. Ludlum's claims are typical of the FLSA and Washington Class Members since both have sustained damages arising out of C&I's illegal and uniform employment pay policy.

79. Ludlum knows of no difficulty that will be encountered in the management of this litigation that would preclude its ability to go forward as a class or collective action.

80. Although the issue of damages may be somewhat individual in character, there is no detraction from the common nucleus of liability facts. Therefore, this issue does not preclude class or collective action treatment.

81. Concentrating the litigation in one forum will promote judicial economy and parity among the claims of individual members of the classes and provide for judicial consistency.

JURY DEMAND

82. Pursuant to F.R.C.P. 38, Ludlum demands a trial by jury.

PRAYER

83. WHEREFORE, Ludlum prays for relief as follows:

a. An order designating this lawsuit as a collective action and authorizing notice pursuant to 29 U.S.C. § 216(b) to the proposed Class Members to permit them to join this action by filing a written notice of consent;

b. For an Order designating the state law classes as class actions pursuant to Fed. R. Civ. P. 23 under Washington Wage Laws;

- c. Judgment against C&I awarding Ludlum and the Class Members all unpaid overtime compensation, liquidated damages, attorneys' fees and costs.

d. An award of pre- and post-judgment interest on all amounts awarded at the highest rate allowable by law; and

e. All such other and further relief to which Ludlum and the Class Members may show themselves to be justly entitled.

Respectfully submitted,

By: /s/ Nicholas D. Kovarik

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